IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2007

CORAM:

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.691 of 1995
and C.M.P.No.7531 of 1995

Divisional Engineer (West),
Tamil Nadu Electricity Board,
Salem - 5 .. Appellant(Defendant)

-Vs-

J.Rajendra Prasad .. Respondent (Plaintiff)

APPEAL under Section 100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.14 of 1993 dated 12.10.1993 on the file of the Court of District Judge, Salem, confirming the judgment and decree in O.S.No.923 of 1997 dated 06.04.1992 on the file of the Principal District Munsif Court, Salem.

For Appellant : M/s. N.Muthusamy
For Respondent : No Appearance

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J U D G M E N T

The unsuccessful defendant, the Tamil Nadu Electricity Board, in both the Courts below, is the appellant in the above second appeal. The suit was filed by the plaintiff for a declaration that the order passed by the defendant on 09.06.1987 is not binding on the defendant and also for a permanent injunction not to interfere with the electricity service connection in respect of Account No.64, Tariff No.IV, MBK Arisipalayam O & M. The case of the plaintiff was that he got the above said tariff connection for his Doll Mill and the defendant on the basis of an inspection stated to have been effected on 25.05.1984 has found that the seal has been broken and a bogus seal was implanted and therefore a criminal complaint was given before the Learned First Class Judicial Magistrate, Salem in C.C.No.188 of 1986 under Sections 39(1) and 44(c) of the Indian Electricity Act. In the meantime, the defendant-Board has sent an initial assessment notice as per

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the terms and conditions of supply on 10.06.1984 demanding an amount of Rs.3,31,580/-. When the respondent/plaintiff has approached the High Court by filing a writ petition against the said order, the High Court in W.P.Nos.6130 to 6132 of 1984 has granted an order of interim stay and even before the order of stay, the plaintiff paid a sum of Rs.43,453.75 and the High Court has directed that after giving opportunity to the plaintiff, final order should be passed and on any such decision, for the payment of the amount, the same shall be permitted to be paid in three instalments. Thereafter, there was no notice and the plaintiff was under the impression that further proceedings will be proceeded after Criminal case is over. However, by a letter dated 09.06.1987, marked on the side of the defendant as Ex.B-4, stating as if there was an inspection conducted and order has been passed and further stating as if the plaintiff has given explanation and ignoring the order of the High Court in W.P.Nos.6130 to 6132 of 1984 directed the plaintiff to pay a sum of Rs.2,90,126.25. The said order was challenged on the ground that it is against the principles of natural justice and passed without giving opportunity and the same was against the order of this High Court passed in the above writ petition.

2. The defence of the defendant in the suit was that the notice has been issued after the issuance of initial assessment and in fact the plaintiff's father has requested for adjournment on few occasions and on that basis there was an enquiry conducted in which the plaintiff, his brother and his father have participated and only after the enquiry the order was passed. The Trial Court and also the First Appellate Court on an appreciation of evidence as well as the various documents has decreed the suit and as against the same, the defendant has filed the present second appeal.

3. While admitting the above second appeal, the following substantial questions of law were framed:-

> "1. Whether the Courts below are right in holding that the plaintiff did not commit theft of energy, particularly, when the bogus seals have been substituted in the place of original seals?
> 2. Whether the Courts below are right in finding that the amount claimed by the appellant Board was without basis, particularly, when the Department conducted the enquiry properly as per the direction of this Hon 'ble High Court in W.P.No.6131 of 1984?
> 3. Whether the lower Courts were right in

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considering the decision rendered by the Criminal Court while deciding the Civil liability?

4. Whether the Courts below are right in sitting over the inspection and the subsequent assessment made by the Appellant Department in exercise of their powers under terms and conditions of supply?"

4. At the outset, it is seen from the judgment of the Learned First Appellate Judge in A.S.No.14 of 1993 that pending the appeal, the plaintiff has filed a document apart from the additional documents filed by the defendant. The additional documents filed on behalf of the plaintiff in the appellate side was marked as Ex.A-1 that is the order in Criminal Revision Case No.506 of 1989 dated 05.08.1993 in which this Court while confirming the order of the Criminal Court below, wherein the prosecution was launched against the plaintiff under the Electricity Act, as stated above, has held that except stating that there is a difference between the seal, which was fixed earlier and also the seal brought by the Department, there was no other evidence to prove that theft was committed by the plaintiff and in view of the same, the plaintiff was acquitted. In addition to that, both the Courts below, on an appreciation of the various documents especially the documents filed on the side of the defendants relating to Exs.B-2 and B-3 apart from Ex.B-10, have come to a categoric conclusion that the Junior Engineer stated to have executed the inspection was not examined and there was no record produced to show that notice was given in accordance with law. Therefore, by relying upon condition No.64 of the terms and conditions of Supply of Electricity, both the Courts below have come to the conclusion on a factual assertion that no opportunity was given to the plaintiff before passing the order imposing responsibility on the plaintiff under Ex.B-4.

5. In this regard, it is relevant to point out that even under the Terms and Conditions of Supply of Electricity, the respondent-Board has the responsibility to pass initial assessment of notice directing the party to pay 50% and thereafter giving show cause notice to the consumer and conducting an enquiry after giving opportunity, the final order should be passed, which is admitted. In view of the above said factual position and based on terms and conditions of which the supply of electricity has been given to the consumer, the Courts below have correctly come to the conclusion that the order passed by the Appellant-Board is not enforceable in law. It was also found that the order came to be passed by the Appellant-Board inspite of the specific directions given in

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W.P.Nos.1630 to 1632 of 1984 marked as Ex.A-1.

6. Further, in the circumstance that the Criminal Court itself has acquitted the plaintiff on the charge of the power theft and there is no question of subsequent inspection stated to have been made by the Board, as it was seen in the additional documents filed on behalf of the defendants, which was found by the learned First Appellate Judge and is not in conformity with the order of this Court passed in W.P.Nos.1630 to 1632 of 1984 in Ex.A-1.

7. In view of the above said facts, the judgment and decree of the Courts below are confirmed and the second appeal stands dismissed. The substantial questions of law framed are answered in favour of the respondent.

8. In the result, the second appeal dismissed with proportionate costs thereof. Consequently, the connected CMP is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

srk

To

1. The District Judge, Salem
2. The Principal District Munsif, Salem.
3.The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.N.Muthuswami, Advocate Sr 21813

VC (CO)
km/4.6.

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